

WETLANDS COUNCIL

MINUTES

June 12, 2012

The Wetlands Council met on Tuesday, June 12, 2012 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Carol Henderson, James Kennedy, Deborah Lievens, Seth Prescott, Russ St. Pierre, and Robert Snelling

Absentees: Councilors: Sharon Champagne, Ryan Crosbie, Susan Slack, and Thomas Sloan

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 8:07 a.m. with introductions and a quorum present. Chairman Kimball introduced the council's new member – Deborah Lievens representing the Municipal Conservation Commissions. Chairman Kimball also announced that Earle Chase has resigned his position as there is a conflict of interest. The Municipal Official and Marine Industry positions are also still vacant.

1. Approval of Minutes

- *Councilor Kennedy made a motion to approve the May 8, 2012 minutes with corrections, second by Councilor Snelling. Motion passed unanimously, with Councilors Henderson and Lievens abstaining.*

2. Public Input: None

3. Status of Appeals

Paula Scott, Appeals Clerk, reviewed the following appeals:

I. New Appeals

II. Decisions that need to be written/finalized and issued.

Docket No. 07-09 WtC - Derry Conservation Commission

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott assigned by AGO

Status: Hearing was scheduled for Dec. 13, 2011 at 10 a.m. Issued notice of hearing time change on Nov. 9, 2011. 12/8/11 received Assented to Motion to Continue. 12/8/11 Motion Granted and hearing was held Feb. 28, 2012 @ 9 a.m. Decision and order to be issued within 90 days (5/28/12). A quorum of the council must be present for the hearing and a quorum of the whole council must be present to vote on the decision. A call is into the Attorney General's office as to clarification of who must vote on the decision and order. Review of the Decision & Order was held. Draft Decision and Order was adopted by the Council on May 8, 2012 and issued.

Docket No. 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball assigned by AGO on January 5, 2011

Status: On June 14, 2011, Council voted to deny LBC's Motion to Dismiss. Decision and order sent on 7/14/2011. Order Requesting Legal Memorandum was issued on 12/13/11. 1/11/12 rec'd Assented-To Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. 1/12/12 issued Ruling Granting Motion to Extend Deadline Requesting Legal Memorandum. 4/13/12 received second Assented-To Motion to Extend Deadline Requesting Legal Memorandum Regarding Abutter Notification. Presiding Officer to act on Motion. Assented-to Motion to Extend Deadline Requesting Legal Memo was granted for 75 days from May 8, 2012, notice issued on May 10, 2012.

III. Hearings or PHCs Pending

Docket No. 08-20 WtC – Anthony Pivero

Subject: 02/19/08 Administrative Order No. 08-007 WD

Presiding Officer: David Conley appointed by AG on 11/17/11

Status: Received Motion for Reconsideration on 10/26/11. Received the corrected filing of Motion for Reconsideration on 11/7/11. Council granted Motion for Reconsideration. Pre-Hearing Conference(PHC) held Dec. 12, 2011. PHO was issued on 12/12/11 with a hearing scheduled for May 8, 2012 @ 9:00 a.m., notice given per Pre-Hearing Order(PHO). April 6, 2012 received DES' Witness and Exhibit List. 4/26/12 received Assented-To Motion to Continue Hearing Date. 5/2/12 Motion was granted. Hearing is rescheduled to August 28, 2012 at 9 a.m., notice sent 5/4/12.

Docket No. 09-36 WtC – Brendan and Dana Keegan

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: Chip Kimball assigned 10/31/11

Status: PHC was scheduled for 11/28/11 @ 9 a.m. Nov 29, 2011 rec'd Motion to Continue Pre-hearing Conference. Motion was Granted and PHC was rescheduled to Dec. 16, 2011 @ 9 a.m. 12/16/11 Notice given by PHO, hearing scheduled for May 22, 2011 @ 9:00 a.m. 5/8/12 received DES' Witness and Exhibit List. 5/9/12 received an Appearance notice for Atty. Rose Marie Joly and Atty. Sherilyn Young for the appellants. Also, received on 5/9/12 Motion to Continue Hearing and For Expedited Ruling. 5/10/12 issued Ruling on Motion to Continue which was granted, hearing now scheduled for Oct. 23, 2012 at 9 a.m.

Docket No. 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: David Conley, Esq. appointed by AG on 12/22/11

Status: Written ruling on Motion to Continue was issued on Nov. 8, 2011. 11/14/11 received Supplement to Appeal. Hearing Notice was issued on 12/9/11. Rescheduled hearing for Feb 14, 2012 @ 9 a.m. Jan 4, 2012, appellant filed Assented-To Motion to Continue. Jan 9, 2012, PO granted Motion to Continue. Hearing has been rescheduled to today June 12, 2012 @ 9 a.m., notice given 1/18/12. Hearing is to be held today.

Docket No. 10-29 WtC – Constance Klefos Trust

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit

Presiding Officer: David Conley, Esq. assigned 10/31/11

Status: Appeal Accepted at 10/11/11 meeting. 10/27/11 Applicant filed Motion to Summarily Dismiss Appeal. 11/3/11 Appellant filed Objection and Answer to the Motion to Summarily Dismiss. Order on Motion to Summarily Dismiss was issued on 12/9/11 and mailed on 12/13/11. PHC scheduled for Jan. 18, 2012. Hearing scheduled for June 26, 2012 @ 9 a.m., notice given per PHO issued on 1/18/12. 3/2/12 received Assented-To Motion to Extend Filing Period for Witness & Exhibit Lists. Ruling on

Motion to Extend Filing Period was granted and issued on 3/16/12. 3/22/12 received Assented-To Motion to Extend Filing Deadlines. 3/27/12 Motion was granted.

Docket No. 10-30 WtC – Dana Belletete

Subject: 08/27/10 Administrative Order No. 10-026 WD

Presiding Officer: David Conley, Esq appointed 12/19/11

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed however it is insufficient. On 10/31/11 a receipt of appeal letter was sent with an explanation about what appeared to have happened with the appeal. On 11/3/11, insufficient appeal letter was mailed with 30 days to correct the insufficiencies. 11/28/11 received revised Petition for Appeal. Receipt of revised appeal letter was sent 12/7/11. Council accepted appeal on 12/13/11, notice sent on 12/16/11. PHC was held on Feb. 15, 2012. Appearance for Linda Magoon was filed on 2/13/12. Hearing scheduled for July 10, 2012 at 9 a.m., notice given per PHO on 2/15/12.

Docket No. 10-31 WtC – Larry Crocker

Subject: 10/24/10 Denial of Reconsideration regarding a permit issued to Christopher Hemingway, File #2009-03021

Presiding Officer: Not Assigned

Action: Nov. 4, 2010, the Wetlands Bureau received a letter from Mr. Crocker purporting to appeal the Decision on Reconsideration. Because it was improperly addressed and incomplete it was never received in the office of the appeals clerk. Appeal Clerk received the appeal on 1/3/12 from the bureau. Letter was issued by Legal Coordinator on 2/13/12. 2/17/12 notice sent regarding Council's plan to discuss at the Mar.13, 2012 meeting the timeliness of the appeal. Council found appeal had been timely filed at its March 13, 2012 meeting. On 3/14/12 sent insufficient appeal letter. 4/2/12 received revised petition for appeal and sent receipt of revised petition. 4/6/12 Mary Ann Tilton filed an appearance on behalf of DES. Council accepted the appeal at its May 8, 2012 meeting. 5/9/12 issued appeal accepted letter. June 4, 2012 issued Notice of PHC which is scheduled for 6/20/12 at 11 a.m.

Docket No. 11-02 WtC –Kathryn Wolf

Subject: 01/24/11 Decision on Reconsideration of File #2004-02929 (granting amended wetland application for Norman Davis)

Presiding Officer: David Conley, Esq appointed 12/19/11

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed however, it was insufficient. On 11/22/11, I sent a receipt of appeal letter with an explanation about what appeared to have happened with the appeal and I also sent a insufficient appeal letter. On 11/30/11, I received a revised Petition for Appeal. On 12/7/11, sent receipt of revised appeal. Council accepted appeal on 12/13/11. 1/12/12 changed name of appeal to correctly reflect appellant's name. PHC held Feb. 15, 2012. Hearing scheduled for July 24, 2012 at 9 a.m., notice given per PHO on 2/15/12.

Docket No. 11-03 WtC – Joseph and Patricia DeVelis

Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie assigned by AGO on May 2, 2011

Status: Rulings on Motion to Extend Time and Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. Hearing was set for March 13, 2012 @ 9 a.m. 12/27/11 Received DES' and Appellant's Witness and Exhibit Lists. 3/9/12 Motion was granted and notice sent. Hearing scheduled for March 13 was continued. Councilor Crosbie spoke with Atty. English regarding Motion to Modify Hearing Date. It was decided to wait on this. Hearing has been rescheduled to October 9, 2012 at 10 a.m., notice issued 5/3/12.

Docket No. 11-06 WtC – John and Sharon Graham

Subject: April 11, 2011 Appeal of Administrative Order No. 11-014 WD

Presiding Officer: David Conley, Esq. appointed on 1/19/12.

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. 2nd PHC held Feb. 15, 2012. Hearing scheduled for April 10, 2012 at 10 a.m. 2nd Notice given per PHO on 2/15/12. On April 2, 2012 received Motion to Adjourn or Continue PHC and Hearing on the Merits. 4/4/12 Ruling on Motion to Continue was granted and issued. Hearing has been rescheduled to September 11, 2012 at 10 a.m., notice issued 5/3/12.

Docket No. 11-09 WtC – Thomas Morrissey and Margaret Russell, et al

Subject: 1/11/11 Wetlands Permit #2009-01574, Town of Lyme

Presiding Officer: Chip Kimball assigned by AG on 9/16/11

Recused: Jim Kennedy and Carol Henderson

Status: 9/27/11 Ruling was issued on Request to Stay. PHC scheduled for 10/26/11. Hearing scheduled for March 27, 2012 at 8 a.m. Received on 12/12/11 per PHO the Supreme Court's Dec. 8, 2011, decision in Thomas Morrissey et al. v Town of Lyme, NHDES and NH F&G. 12/19/11, Appellant sent letter informing the Council that the Appellant has filed for a Motion for Rehearing with the Supreme Court. 1/18/12 received notice that the Supreme Court denied the Motion for Reconsideration. 2/2/12 received applicant's Motion to Dismiss. Also received appellant's Objection to Town of Lyme's Motion to Dismiss. 2/24/12 received the Town of Lyme's Reply to Objection to Motion to Dismiss. 3/2/12 received Petitioner's Response to Town's Reply to Objection to Motion to Dismiss. 3/9/12 issued Ruling on Motion to Dismiss and Summary Judgment. The appeal is summarily denied. 4/6/12 received Motion for Reconsideration. 4/16/12 received Intervener's Objection to Petitioners' Motion to Reconsider. Presiding Officer to act on Motion and Objection. Council to consider draft ruling on Motion for Reconsideration at May 8, 2012 meeting. Council reviewed, discussed and adopted the Ruling on Motion for Reconsideration and issued it on May 8, 2012.

Docket No. 11-12 WtC – George R. and Denise Scholl

Subject: 09/22/11 Denial on Reconsideration for Wetlands Permit #2011-00314

Presiding Officer: David Conley, Esq. appointed 12/19/11

Action needed: Appeal was filed timely on 10/21/11. Attorney Hanna filed an appearance for the appellant on 10/21/11. Receipt of Appeal letter was issued on 10/21/11. Council accepted appeal on 12/13/11. PHC was held Feb. 15. Hearing scheduled for August 14, 2012 at 10 a.m., notice given per PHO on 2/15/12. 2/24/12 received appellant's request for certified copy of DES' file.

Docket No. 11-13 WtC – R. Michael Mayo, et al.

Subject: 10/18/11 Denial of Request for Reconsideration

Presiding Officer: David Conley, Esq. appointed on 1/19/12

Recused: David Thompson

Action needed: Appeal was filed timely on 11/17/11 but was insufficient. Sent insufficient appeal letter on 11/17/11 and received revised Petition for Appeal on 11/23/11. Receipt of revised appeal letter was sent 11/28/11. Appeal accepted at 1/10/12 meeting. PHC scheduled for March 12, 2012 at 9 a.m. 2/28/12 received applicant's copy of notice that appeal had been accepted by the Council, by return mail which states he is temporarily away. 3/6/12 received phone call from applicant regarding appeal. 3/12/12 received appearance from Attorney Regina Nadeau for the applicant. PHC was held on 3/12/12 and hearing is scheduled for Sept. 25, 2012, with notice given per PHO on 3/12/12. 4/19/12 received an appearance for Atty. Maureen Smith and Atty. Rachel Goldwasser for the appellants. 5/11/12 received Permittee's Witness and Exhibit List. 5/11/12 also received Appellants' Witness and Exhibit List. 5/15/12 received appearance from Mary Ann Tilton.

Docket No. 12-02 WtC – Rene Montplaisir & Barbara Fraser

Subject: 12/30/11 Administrative Order No. 11-037 WD

Presiding Officer: David Conley appointed on 3/15/12

Action needed: Appeal filed timely on 1/20/2012, issued receipt of appeal letter. Council accepted appeal on 3/13/12, notice sent 3/14/12. PHC was scheduled for May 2, 2012 at 10:30 a.m., notice issued 3/26/12. 4/10/12 received appearance from Linda Magoon. PHC was held on 5/2/12, a second PHC is scheduled for 8/13/12 at 9 a.m. and a hearing is scheduled for August 28, 2012 at 1 p.m. Notice given per Pre-Hearing Order issued on May 2, 2012.

Docket No. 12-03 WtC – Hixon Realty Trust

Subject: 01/24/12 Denial of Reconsideration regarding a permit issued to Steve McKallagat, File #2011-01061

Presiding Officer: David Conley appointed on 5/30/12.

Action: 2/22/12 received Notice of Appeal. 2/22/12 issued insufficient notice of appeal letter. 3/22/12 received addendum to Notice of Appeal. 3/23/12 issued receipt of revised appeal letter. Council accepted appeal at its May 8, 2012 meeting; on May 10, 2012 issued appeal accepted letter. Jun 4, 2012 issued Notice of PHC which is scheduled for June 20, 2012 at 12 p.m. June 11, 2012 received Request for Continuance from Appellant. Hearing Officer to rule on request.

Docket No. 12-04 WtC – Fillmore Industries, Inc.

Subject: 02/14/12 Administrative Order No. 12-005 WD

Presiding Officer: David Conley appointed on 5/30/12.

Action: 3/15/12 received Notice of Appeal. 3/15/12 issued insufficient notice of appeal letter. 3/22/12 received revised Notice of Appeal. 3/27/12 issued receipt to revised appeal letter. Council accepted appeal at its May 8, 2012 meeting, on May 10, 2012 issued appeal accepted letter. June 4, 2012 issued Notice of PHC which is scheduled for June 20, 2012 at 10 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Presiding Officer: Chip Kimball

Recused: Larry Morse

Status: Appellant wants this appeal to remain open until "Gary Goodspeed completes his portion of the work agreed upon in the restoration plan agreement dated July 1, 2010." John will withdraw this appeal when Mr. Goodspeed receives a letter of compliance and a release of recordation.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball assigned by AGO on January 26, 2011

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11 Rec'd Suggestion of Bankruptcy on Dec. 5, 2011. On 12/6/11 rec'd withdrawal of appearance from appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court.

V. Misc.

FYI

Docket No. 09-42 WtC – Town of Bristol

Subject: 11/24/09 Denial of Reconsideration for Permit #2008-00822 issued to Swiss View Condominium Beach Fence

Presiding Officer: Not assigned

Status: Notice of Appeal was received on 12/21/09. The appeal appears not to be sufficient. There is no written communications from the prior Appeals Clerk in this case. September 2011 the current Appeals Clerk contacted the town to see if they were pursuing this appeal. She was informed that the person who filed the appeal is no longer working for the Town and upon further information the Town did not wish to pursue the appeal. The Appeals Clerk has requested several times that the Town withdraw their appeal, but has not received anything from Oct. 2011 to Feb. 2012. A status request will be sent then it will be summarily dismissed if no response. Sent status request to the Town of Bristol on 4/10/12 with 20 days to respond; did not receive a response. Council to act on this docket. Council voted at its May 8, 2012 meeting to summarily dismiss this appeal pursuant to Env-WtC 204.04 (g). Notice appeal was summarily dismissed was issued on May 10, 2012.

4. **Old Business** - None

5. **New Business**

a. **Wetlands Bureau Report – Collis Adams, Wetlands Bureau Administrator**

Funding – Wetlands fee account is in the black.

Shoreland - account is running in a deficit but there is improvement.

Staffing – 2 staff from the Wetlands Bureau are still assigned elsewhere within DES

Outreach – due to budget cuts, there is still no staff so no outreach is being done.

Legislative –

1) SB 19 still being debated as to the definition of prime wetlands in both Senate and House. 7 communities would be affected by the buffer timeframe.

2) SB 21 definition of wetlands, dealing with exemptions and developing a list so a guidance document can be drafted as to what is a legitimate exemption.

Rule making – making progress but staff has been reassigned.

ARM Fund Presentation – there was discussion regarding extensions and the future. It was decided to plan on November 13th for the ARM Fund presentation.

There will be a meeting June 15, 2012 of Council Chairs and Vice Chairs to go over the hearing process.

Discussion was held as to how the Council is being made aware of what appeals the Supreme Court will be hearing. The Hooksett and Morrissey Appeals have gone to the Supreme Court.

6. **Next Meeting** –

There is a hearing on June 26, 2012 at 9 a.m. for Constance Klefos Trust.

Next regular meeting will be Tuesday, July 10, 2012 beginning at 8 a.m. with Dana Belletete hearing at 9 a.m.

7. **Adjournment**

- ***Councilor Kennedy made a motion to adjourn, second by Councilor Lievens. Motion passed unanimously.***

Meeting adjourned at 8:47 p.m.



WETLANDS COUNCIL

HEARING MINUTES

June 12, 2012

The Wetlands Council met for the Akwa Marine Yacht Club Appeal Hearing
Tuesday, June 12, 2012 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Councilors: Carol Henderson, James Kennedy, Deborah Lievens, Seth Prescott, Russ St. Pierre, and Robert Snelling

Absentees: Councilors: Sharon Champagne, Ryan Crosbie, Susan Slack, Thomas Sloan

Recused: Chairman Chip Kimball

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 10 a.m.

The Hearing is continued until a settlement agreement is reached or either party requests to resume the hearing. The appellant will update the council in 60 days.

The Hearing concluded at 1:50 p.m.